



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,239	07/22/2004	Heinrich Schubert	E7900.2001/P2001	4005
24998	7590	01/09/2008		
DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			EXAMINER EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			01/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/502,239

Applicant(s)

SCHUBERT, HEINRICH

Examiner

Darwin P. Erez

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/22/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 7/22/04 has been received and made of record. Note the acknowledged form PTO-1449 enclosed herewith.

### ***Drawings***

3. The drawings filed on 7/22/07 are acceptable.

### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

5. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Independent claim 1 already recites the inner and outer sleeves comprising electrically conductive materials.

6.. Claim 11 recites the limitation "the contact surfaces" in line 2. There is a lack of antecedent basis for this limitation in the claim.

7. Claims 16 and 17 recite the limitation of "the control means". There is a lack of antecedent basis for this limitation in the claims.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-9, 11, 14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,873,975 to Walsh et al. and in view of US 4,892,098 to Sauer.

Walsh discloses an anastomosis connector comprising an inner sleeve **12** mounted on an end of a first hollow organ such that the end can be everted over the

inner sleeve (Figs. 9A-9B); and an outer sleeve **16** mounted around the end of a second hollow organ **84**, wherein the inner and outer sleeves are made of electrically conductive materials, such as stainless steel (col. 12, ll. 34-44), thus being capable of being connected to an external current having a control means so that a current can be applied to the electrically conductive materials (the external current is not positively recited in the claims); wherein any surface of the sleeves would inherently be electrically conductive; wherein the outer sleeve is in the form of a wired loop; wherein the inner sleeve has a flange that acts as a fitting element against the outer sleeve; and wherein the sleeves are cylindrical.

Walsh discloses the outer sleeve having ends that are separable (pivotal) but is silent with regards to the inner sleeve being separable. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the inner sleeve be separable since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961). It is noted that modifying the inner sleeve to have various elements will inherently provide pivotal portions and breaking sites.

Furthermore, Sauer discloses that anastomosis connectors are known to be formed in various elements (Figs. 4 and 5), which allows the connector to be opened and closed on the hollow body organs. Thus, modifying the device of Walsh to have a separable inner sleeve would allow the sleeve to mount on the outside of the first hollow organ prior to the step of everting the end of the tissue over the sleeve.

It also would have been obvious to provide interlocking fastening means between the separated portions of the sleeve in order to maintain the assembled shape. The examiner takes Official notice that interlocking fastening means such as male and female connectors are well known in the art connecting one portion to another portion.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. and Sauer, as applied to the rejections above, and in further view of US 4,470,415 to Wozniak.

The above combination of Walsh and Sauer discloses all the limitations of the claim except for portions of the inner and outer sleeves to be formed of a plastic material. However, the patent to Wozniak discloses that anastomotic connectors are known to be formed from plastic materials. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Walsh/Sauer to have all or portions of the inner and outer sleeves to be made of plastics since plastic, as well as stainless steel, are well known biocompatible materials used to formed medical implants.

12. Claims 12, 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh et al. and Sauer, as applied to the rejections above, and in further view of US 5,649,937 to Bito et al.

The above combination of Walsh and Sauer discloses all the limitations of the claim except for the device having a sensor for measuring the impedance or temperature of the device, or wherein the device is connected to a current source. However, the use of current to enhance an anastomotic site is well known in the art, as

disclosed by Bito. Bito discloses an anastomotic device having sensors **26** for providing various parameters for the device, and wherein a current is provided to anastomotic connector for electrocoagulation of the tissues. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use modify the device of Walsh/Sauer to include sensors and be connected to an electric current because providing an electric current to an anastomotic connector will enhance the integrity of the seal between the first and second hollow organs via electrocoagulation. Furthermore, the device of Bito is usable with the device of Walsh because Walsh discloses a device that is made of electrically conductive materials.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/502,239  
Art Unit: 3773

Page 7

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezol/  
Examiner  
Art Unit 3773

de